

1 YURI MIKULKA (SBN 185926)
2 *ymikulka@ztlp.com*
3 SARAH S. BROOKS (SBN 266292)
4 *sbrooks@ztlp.com*
5 **ZUBER & TAILLIEU LLP**
6 10866 Wilshire Boulevard, Suite 300
7 Los Angeles, California 90024
8 Telephone: (310) 807-9700
9 Facsimile: (310) 807-9701

JS-6

10 Attorneys for Defendant Lincoln Provision, Inc. USA

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12 Million (Far East) Ltd., a foreign
13 company,

14 Plaintiff,

15 v.

16 Lincoln Provision Inc. USA, a
17 corporation and DOES 1 through 100,
18 inclusive,

19 Defendant.

20 Lincoln Provision Inc. USA,

21 Third Party Plaintiff,

22 v.

23 Philip Wolfstein, Viteck International
24 Corp., and ROES 1 through 50,
25 inclusive

26 Third Party Defendants

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CASE NO. CV09-7168 R (AGRx)

**ORDER GRANTING
DEFAULT JUDGMENT AND
JUDGMENT**

Date: August 23, 2010

Time: 10:00 a.m.

Judge: Hon. Manuel L. Real

Place: 312 North Spring Street
Courtroom 8
Los Angeles, CA 90012

Discovery Cut-Off: April 9, 2010

Trial Date: May 18, 2010

1 On August 23, 2010, Third-Party Plaintiff Lincoln Provision Inc. USA's
2 ("Lincoln") Motion for Default Judgment against Third-Party Defendants Philip
3 Wolfstein and Viteck International Corp. (collectively, "Third-Party Defendants")
4 was heard by the Court. Based upon the Court's full consideration of the record
5 including the Third Party Complaint, the prior entry of Default, the pleadings,
6 memoranda, declarations and moving papers in support of Lincoln's Motion for
7 Default against Third-Party Defendants and in support of Third Party Defendant
8 Philip Wolfstein's Motion to Set Aside Entry Of A Default Judgment, the
9 documents presented therein and throughout this action, and the oral arguments and
10 documents submitted at the hearing, the Court finds that:

11 **WHEREAS** Third-Party Defendants were properly served in this action but
12 have not responded to the Third Party Complaint, and they have not otherwise
13 appeared in this action prior to the entry of Default;

14 **WHEREAS** Lincoln has met all the conditions necessary for entry of default
15 judgment pursuant to Federal Rules of Civil Procedure 55 and Local Rule 55;

16 **WHEREAS** the Third Party Complaint contains well-pled charges of Third-
17 Party Defendants' breach of contract, negligent misrepresentation and fraud, and
18 Lincoln is entitled to a favorable liability determination on its claims;

19 **WHEREAS** Third Party Defendant Viteck has not filed an opposition to the
20 Motion for Default Judgment;

21 **WHEREAS** Third Party Defendant Philip Wolfstein's Motion to Set Aside
22 Entry Of A Default Judgment fails to set forth good cause under Federal Rules of
23 Civil Procedure 55(c) to set aside the entry of default in that Wolfstein has engaged
24 in culpable conduct that led to the entry of default including receiving but failing to
25 respond to constructive notice of lawsuit in the form of emails that included
26 pleadings and correspondence related to the case, that Wolfstein has failed to set
27 forth meritorious defense, and that Lincoln will be prejudiced if Default is set aside;

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1 **WHEREAS** based on the pleadings, evidence, and papers submitted, Lincoln
2 is entitled to damages under the California Uniform Commercial Code §§ 2713(1),
3 2715(1) and 2715(2)(a) including the difference between the market price and
4 contract price and consequential damages including lost profits, the amount of
5 liability owed to Lincoln's customer, anticipated lost profits and loss of good will
6 directly and proximately caused by Third-Party Defendants' breach of the contract;

7 **WHEREAS** Lincoln also is entitled to the amount that will compensate for
8 all of the detriment proximately caused by Third Party Defendants' fraud and
9 negligent misrepresentation including its lost profits, the amount of liability owed to
10 Lincoln's customer and Plaintiff Million (Far East) Ltd., anticipated lost profits and
11 loss of good will;

12 **WHEREAS** Lincoln is entitled to costs pursuant to Cal. Civ. Proc. § 1033;

13 **WHEREAS** Lincoln is entitled to prejudgment interest calculated at
14 calculated at ten percent per annum pursuant to Cal. Civ. Code §§ 3287(b) and
15 3289(b) from the date the Third Party Complaint was filed on October 22, 2009
16 until judgment; and

17 **WHEREAS** Lincoln is entitled to post-judgment interest pursuant to 28
18 U.S.C. § 1961(a) at the rate of _____, the weekly average one-year constant
19 maturity Treasury yield, as published by the Board of Governors of the Federal
20 Reserve System, for the calendar week preceding the date of the judgment.

21 For the foregoing reasons, **IT IS HEREBY ORDERED, ADJUDGED AND**
22 **DECreed AS FOLLOwS:**

23 Lincoln's Motion for Default Judgment is hereby granted and Default
24 Judgment is entered in favor of Lincoln in the amount of one million and two
25 hundred fifty six thousand dollars, eight hundred sixty dollars and fifty cents
26 (**\$1,256,860.50**), consisting of the following which shall be paid to Lincoln within
27 thirty (30) calendar days from the date of entry of this Order:

28 • Difference between market price and contract price of \$560,000;

- Incidental damages of travel costs of \$275.91;
- Consequential damages of (1) lost resale profits of \$40,000, (2) settlement payment made to Plaintiff Million (Far East) in connection with this action of \$125,000, and (3) anticipated lost profits due to loss of goodwill of \$420,000;
- Costs of \$16,145.05; and
- Prejudgment interest of \$95,439.66.

IT IS FURTHER ORDERED that Third-Party Defendants shall pay Lincoln post-judgment interest of \$_____ per day within thirty (30) calendar days from the date of entry of this order, which is calculated from the date of entry of this Order through and until the date Third Party Defendants pay the Judgment to Lincoln.

IT IS FURTHER ORDERED that no just reason exists for delay for entering this Judgment pursuant to Federal Rule of Civil Procedure 54(b).

IT IS FURTHER ORDERED that the Court directs entry of this Judgment against each Third Party Defendant Philip Wolfstein and Viteck International Corp. and that this Judgment shall be binding upon, and inure to the benefit of, the parties' respective successors and assigns.

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1 **IT IS FURTHER ORDERED** that the jurisdiction of this Court is retained
2 for the purpose of making any further orders necessary or proper for the
3 construction, modification or enforcement of this Judgment.

4 **IT IS SO ORDERED.**

5 Dated: August 27, 2010



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7 HONORABLE MANUEL L. REAL
8 UNITED STATES DISTRICT JUDGE
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 10866 Wilshire Boulevard, Suite 300, Los Angeles, CA 90024.

On August 25, 2010, I served true copies of the following document(s) described as **[PROPOSED] ORDER GRANTING DEFAULT JUDGMENT** on the interested parties in this action as follows:

Philip Wolfstein
1155 Wellesley Avenue, #104
Los Angeles, California 90049
Email address: pwolfsteing5@gmail.com

Philip Wolfstein
Post Office Box 495492
Los Angeles, California 90049

Viteck International Corporation
21031 Ventura Boulevard, Suite 424
Woodland Hills, California 91364

Seongsu Kim
Agent for Service of Process
5517 Wellesley Drive
Calabasas, California 91302

Michael A. Brewer
Hornberger & Brewer, LLP
444 South Flower Street, Suite 3010
Los Angeles, CA 90071-2901
T: 213.733.1655
F: 213.488.1255
Attorney for Plaintiff, MILLION (FAR EAST) LTD.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Zuber & Taillieu LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address olucido@ztlp.com to Philip Wolfstein at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 25, 2010, at Los Angeles, California.

Olivia T Lucido